

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL  
December 13, 2006**

**ITEM 9**

**SUBJECT**

PETITION OF CURTIS D. QUINONES AND VAPOR CLEANERS, INC. (CLEANUP AND ABATEMENT ORDER NO. R3-2006-0021 FOR VAPOR CLEANERS, INC., CURTIS D. QUINONES AND CITY OF MONTEREY), CENTRAL COAST REGION.  
SWRCB/OCC FILE A-1740

**DISCUSSION**

On February 9, 2006, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) issued Cleanup or Abatement Order No. R3-2006-0021, directing Vapor Cleaners, Inc., Curtis D. Quinones and the City of Monterey to undertake activities addressing chlorinated solvent in groundwater at the Site of the former Vapor Cleaners in Monterey. Curtis D. Quinones and Vapor Cleaners (Petitioners) argue that the site should be closed and no further action required. Among other arguments, the Petitioners claim that beneficial use of the groundwater beneath the Site is not appropriately designated as “municipal and domestic supply” because it does not meet criteria for a potential source of drinking water.

The draft order would find that the Central Coast Regional Water Quality Control Plan designates the present and potential beneficial uses of groundwater beneath the Site, including municipal and domestic supply. Existing designations cannot be challenged in a petition. If groundwater qualifies for an exception under State Water Board Resolution 88-63, the Sources of Drinking Water Policy, a site-specific de-designation may be appropriate. Such de-designation requires a Basin Plan amendment. The draft order would dismiss the petition.

**POLICY ISSUE**

Should the State Water Board adopt the proposed order dismissing the petition?

**FISCAL IMPACT**

None.

**REGIONAL BOARD IMPACT**

Central Coast Water Board

**STAFF RECOMMENDATION**

Adopt the order as proposed.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**ORDER WQ 2006-**

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In the Matter of the Petition of

**CURTIS D. QUINONES AND VAPOR CLEANERS INC.**

For Review of Cleanup and Abatement Order No. R3-2006-0021  
for Vapor Cleaners Inc., Curtis D. Quinones, and City of Monterey  
Issued by the  
California Regional Water Quality Control Board,  
Central Coast Region

**SWRCB/OCC FILE A-1740**

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BY THE BOARD:

On February 9, 2006, the Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board), issued Cleanup and Abatement Order No. R3-2006-0021 (CAO), requiring Vapor Cleaners, Inc., Curtis D. Quinones, and the City of Monterey to undertake cleanup actions to address chlorinated solvent contamination at the site of a former dry cleaning business located in Monterey. Curtis D. Quinones and Vapor Cleaners, Inc. (Petitioners) filed a timely petition, seeking review of the CAO.<sup>1</sup> Petitioners claim that the CAO is unwarranted and that its findings are not supported by substantial evidence in the administrative record. In this Order, the State Water Resources Control Board (State Water Board or Board) considers contentions raised by the Petitioners and dismisses the petition.<sup>2</sup>

**I. BACKGROUND**

Petitioners formerly owned and operated a dry cleaning business at 951 Del Monte Avenue in Monterey (Site), approximately 200 feet from Monterey Bay. Tetrachloroethylene (PCE) was discovered in soil and groundwater in 1987. Following issuance of Central Coast Water Board Cleanup and Abatement Order No. 87-99, Petitioners installed and operated a soil vapor extraction system to address chlorinated solvents emanating from the

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<sup>1</sup> Petitioners also requested a stay of the CAO. The State Water Board's Executive Director denied the stay request by letter dated March 27, 2006.

<sup>2</sup> This Order is based upon the record before the Central Coast Water Board.

Site. In 2001, underground storage tanks (USTs) were discovered and removed from the Site during demolition of the building and removal of pavement. The USTs were found to have leaked Stoddard solvent, and a Corrective Action Plan (CAP) was developed and undertaken for excavation and disposal of soil containing the solvent. Following implementation of the CAP, quarterly groundwater monitoring continued; later the frequency was reduced to semi-annual monitoring.<sup>3</sup> Petitioners' consultant has reported seasonally shifting values for PCE and its breakdown products, which include vinyl chloride. Petitioners ask that the Site be closed and no further action required.

## **II. CONTENTIONS AND FINDINGS<sup>4</sup>**

Contention: Petitioners contend that beneficial use of the groundwater beneath the Site is not appropriately designated as "municipal and domestic supply" because it does not meet criteria for a potential source of drinking water.

Finding: The Central Coast Regional Water Quality Control Plan (Basin Plan) designates the present and potential beneficial uses of groundwater beneath the Site, among them municipal and domestic water supply (which includes drinking water supply). Whether the groundwater meets the criteria for drinking water is irrelevant; the existing beneficial use designation cannot be challenged in a petition contesting a cleanup order.<sup>5</sup> As will be discussed below, the Central Coast Water Board may wish to reconsider whether groundwater beneath the Site qualifies for an exception under State Water Board Resolution 88-63, the Sources of Drinking Water Policy. Such reconsideration would be required before the Basin Plan could be amended and the municipal and domestic water supply beneficial use removed.

Petitioners assert that the CAO is unwarranted because, among other arguments put forth, beneficial uses of groundwater beneath the Site are "limited" and thus not unreasonably impaired.<sup>6</sup> This argument assumes that the current likelihood of attaining a

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<sup>3</sup> Monitoring and Reporting Program No. R3-2003-0101 (revised Jan. 25, 2005).

<sup>4</sup> To the extent that this Order does not address all of the issues raised by Petitioners, the State Water Board finds that the issues that are not addressed are insubstantial and not appropriate for State Water Board review. See *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177 [239 Cal.Rptr. 349].

<sup>5</sup> Compare Wat. Code, §§ 13050, subd. (j) & 13240 (requiring water quality control plans that designate beneficial uses) with Wat. Code, § 13320, subd. (a) (authorizing State Water Board petition review of cleanup and abatement orders and other enumerated sections in the Porter-Cologne Act, but not the designation of uses).

<sup>6</sup> In describing the beneficial uses as "limited," Petitioners quote a finding in Cleanup and Abatement Order No. 87-99 ("Beneficial uses of groundwater beneath the site are fairly limited due to high salinity." Order No. 87-99, Finding 1.f.) That finding does not obviate the laws and procedural requirements governing designation of beneficial uses, as set forth herein.

beneficial use should be considered in determining the applicable water quality objectives or in deciding whether to implement the established water quality objectives in a CAO. The argument is not supported by law.

The Porter-Cologne Water Quality Control Act<sup>7</sup> and the Basin Plan require protection of potential as well as actual beneficial uses.<sup>8</sup> Resolution 88-63 provides that “[a]ll surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards”, with listed exceptions. Resolution 88-63 is, by reference, a part of the Basin Plan.<sup>9</sup>

Resolution 88-63 contains an exception for “ground waters where . . . [t]he total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system . . . .” The conjunctive “and” means that two requirements must be met to trigger the exception. First, total dissolved solids (i.e., salinity) must exceed 3,000 mg/L. Second, the regional water board must reasonably expect the water will not be used as a source of drinking water.

The Basin Plan currently designates the groundwater below the Site as having the beneficial use of municipal and domestic supply, as well as agricultural water supply and industrial use.<sup>10</sup> Petitioners argue that groundwater beneath the Site does not meet State Water Board Resolution No. 88-63 criteria for a potential source of drinking water, presumably because of excessive salinity.

Beneficial uses are designated in the Basin Plan through a quasi-legislative process<sup>11</sup> rather than on a case-by-case basis, as in permits or cleanup orders. This Board has previously recognized that a Basin Plan amendment is the appropriate vehicle to designate and de-designate uses and that Resolution 88-63 is a tool to use in determining designations; it is not self-implementing.<sup>12</sup> Therefore, even if Petitioners are correct as to the applicability of an exception to Resolution 88-63, de-designation through a Basin Plan amendment is the appropriate remedy. Unless and until the beneficial use of the groundwater is de-designated

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<sup>7</sup> Wat. Code, § 13000 et.seq.

<sup>8</sup> Wat. Code, § 13241, subd. (a). Basin Plan, Chapter 2, at p. II-1.

<sup>9</sup> Basin Plan, Chapter 2, at p. II-1.

<sup>10</sup> *Ibid.* See also, State Water Board Division of Water Quality, Technical Report, Petition of Mr. D. Quinones (Aug. 16, 2006) [hereafter, “DWQ Technical Report”] at p. 2.

<sup>11</sup> Wat. Code §§ 13050, subd. (j), 13240, 13241, subd. (a).

<sup>12</sup> Order No. WQO 2002-0015, *In the Matter of Review on Own Motion of Waste Discharge Requirements Order No. 5-01-044 for Vacaville’s Easterly Wastewater Treatment Plant*, at p. 13.

through that process, the Central Coast Water Board must protect the designated uses. We will, nonetheless, discuss Petitioners' contention regarding the propriety of this designation.

Although the Petitioners refer to high salinity in arguing for applicability of an exception to the Resolution 88-63, the record shows that the TDS of groundwater sampled from Site monitor wells varies spatially, seasonally, and historically.<sup>13</sup> This is due in part to tidal mixing with the adjacent Monterey Bay and the difference in density of salt water and fresh water. Groundwater in the upper half of the aquifer (approximately 4 to 12 feet below ground surface, or bgs) likely has low enough salinity levels to qualify as a source of drinking water under Resolution 88-63, while the groundwater below 12 feet bgs likely has salinity levels in excess of the 3,000 mg/L, supporting the first criterion of exception.<sup>14</sup>

Although Petitioners do not address it, Resolution 88-63 provides an additional exception where "[t]he water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day." A domestic supply well constructed at the Site would likely be capable of producing more than 500 gallons per day. However, the water produced would likely have a TDS concentration of 5,000 to 10,000 parts per million (ppm) after a short period of pumping.<sup>15</sup>

The Central Coast Water Board appropriately applied the beneficial uses designated for groundwater beneath the Site. It appears that the groundwater may not qualify for a salinity exception under Resolution 88-63. However, the administrative record indicates that groundwater at the Site may not be capable of meeting a sustained yield below the 3,000 ppm salinity threshold. Accordingly, Central Coast Water Board may wish to reconsider, consistent with Resolution 88-63 and other applicable laws and resolutions, the designation of groundwater beneath the Site as municipal and domestic supply. If the Basin Plan were revised, it would be appropriate to reconsider the CAO.

### **III. CONCLUSION**

The existing Basin Plan designates groundwater underlying the Petitioners' former dry cleaning facility as having a municipal and domestic supply beneficial use. This designation cannot be collaterally challenged in a petition contesting a cleanup and abatement

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<sup>13</sup> DWQ Technical Report at pp. 2-3.

<sup>14</sup> *Id.*, at p. 3. Based on the design and screening of the existing monitor wells, it is difficult to reach precise conclusions about TDS levels throughout the aquifer. Such information could be developed through additional monitoring.

<sup>15</sup> *Ibid.*

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October 2, 2006

order. The petition is therefore dismissed. De-designation of beneficial uses requires a Basin Plan amendment. Additional information contained in the record may support application of an exception to Resolution 88-63.

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# **DRAFT**

October 2, 2006

## **IV. ORDER**

IT IS HEREBY ORDERED that the petition of Curtis D. Quinones and Vapor Cleaners, Inc., be dismissed.

## **CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 15, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

**DRAFT**

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Song Her  
Clerk to the Board

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October 2, 2006

MJWood/dmw

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